Office-Supreme Court, U.S.
FILED
JUL 13 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LINDA F. MASON,

Appellant,

against

ROBERT ABRAMS, Attorney General of the State of New York,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney Pro Se
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7407

SHIRLEY ADELSON SIEGEL
Solicitor General

CHARLES BRODY
Assistant Attorney General
Of Counsel

TABLE OF CONTENTS

	PAGE
Table of Authorities	i
Motion To Dismiss Or, In The Alternative, Affirm	1
Parties to the Proceeding	1
Statement of Facts	2
Background and Pleadings	2
The Good Cause Hearing	4
POINT I—The Federal Questions Is Insubstantial	8
POINT II—In the Alternative, the order of the Court of Appeals of the State of New York should be affirmed	9
First Amendment	10
Privacy	10
DRL § 114 is constitutional as applied to Appellant	13
Conclusion	14

TABLE OF AUTHORITIES

ALMA Society, Inc. v. *Mellon,* 459 F. Supp. 912 (S.D.N.Y. 1978), *aff'd,* 601 F. 2d 1225 (2d Cir.) *cert. denied,* 444 U.S. 995 (1979) 8, 11, 12

Application of Maples, 563 S.W. 2d 760 (Mo. 1978) (*en banc*) 9, 10, 12

Chambers v. *Parker,* 349 So. 2d 424 (La. Ct. App. 1977) 9

Chattman v. *Bennett,* 57 A D 2d 618, 393 N Y S 2d 768 (2d Dept. 1977) 13

PAGE

Department of Air Force v. *Rose*, 425 U.S. 352 (1976) 10

Eisenstadt v. *Baird*, 405 U.S. 438 (1972) 10

Griswold v. *Connecticut*, 381 U.S. 479 (1965) 10

In re Adoption of Rand, 347 So. 2d 450 (Fla. Ct. App. 1977) 9

In re Application of Anonymous, 89 Misc. 2d 132, 390 N Y S 2d 779 (Sur. Ct. Qns. Co. 1976) 9, 12

In re Application of Anonymous, 92 Misc. 2d 224, 399 N Y S 2d 857 (Sur. Ct. Qns. Co. 1977) 12

In re C.A.B., 384 A. 2d 679 (D.C. Ct. App. 1978) 9

In re Linda F.M. (I), 92 Misc. 2d 828, 401 N Y S 2d 960 (Sur. Ct. Bx. Co. 1978) 3

In re Linda F.M. (II), 95 Misc. 2d 581, 409 N Y S 2d 638 (Sur. Ct. Bx. Co. 1978) 12, 13

In re Maxtone-Graham, 90 Misc. 2d 107, 393 N Y S 2d 835 (Sur. Ct. N.Y. Co. 1975) 9, 12

In re Spinks, 232 S.E. 2d 479 (N.C. Ct. App. 1977) ... 12

Isaac v. *Town of Queensbury*, 277 N.Y. 37, 12 N.E. 2d 785 (1938) 14

Katz v. *United States*, 389 U.S. 347 (1967) 11, 12

Mills v. *Atlantic City Department of Vital Statistics*, 372 A. 2d 646 (N.J. Ch. Div. 1977) 9, 12

People ex rel. Scarpetta v. *Spence-Chapin Adoption Service*, 28 N Y 2d 185, 321 N Y S 2d 651 (1971) 11

Roe v. *Wade*, 410 U.S. 113 (1973) 10

Smith v. *Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977) 13

Stanley v. *Georgia*, 394 U.S. 557, 564 (1969) 10

Yesterday's Children v. *Kennedy*, 569 F. 2d 431 (7th Cir. 1977), *reh. denied, cert. denied*, 437 U.S. 904 (1978) 9

No. 80-1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LINDA F. MASON,

Appellant,

against

ROBERT ABRAMS, Attorney General of the State of New York,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Motion To Dismiss Or, In The Alternative, Affirm

Robert Abrams, Attorney General of the State of New York, respectfully moves this Court to dismiss this appeal or, in the alternative, to affirm the order of the Court of Appeals of the State of New York.

Parties to the Proceeding

The parties to this proceeding are Linda F. Mason, appellant, and Robert Abrams, Attorney General of the State of New York, appellee.

Statement of Facts

Background and Pleadings

Appellant was born on July 19, 1940. She was adopted on March 4, 1941 pursuant to an order of the Surrogate's Court of Bronx County of the State of New York. Appellant's adoption records and original birth certificate were sealed pursuant to Section 114 of the Domestic Relations Law (McKinney's) ("DRL") and to Section 567-2.0 of the New York City Administrative Code, respectively.*

---

* DRL § 114 provides, in pertinent part,

"[the adoption] order and all papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parent and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection only as hereinafter provided."

NYC Administrative Code § 567-2.0 provides:

"§ *567-2.0 Supplemental birth records.*

a. A new birth record shall be made whenever:

* * * *

3. Notification is received by the department from the clerk of a court of competent jurisdiction or proof is submitted of a judgment, order or decree relating to the adoption of the person. (Subd. as amended by L. 1950, ch. 415, July 1).

* * * *

c. When a new birth record is made the department shall substitute such new record for the birth record then on file. The department shall place the original birth record and the proof, notification and papers pertaining to the new birth record under seal. Seals shall not be broken except by order of a court of competent jurisdiction. Thereafter when a certified copy of the certificate of birth of such a person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth."

On June 3, 1977, appellant petitioned the Surrogate's Court of Bronx County to inspect her adoption records. Her petition alleged various psychological and medical reasons to justify her desire to review her records and claimed that these reasons satisfied the "good cause" requirement of DRL § 114 necessary to unseal the records.* Finally, the petition alleged that if appellant's petition were dismissed for failure to establish good cause, the requirement of good cause was unconstitutional as applied to appellant.

The Attorney General was cited pursuant to Section 71 of the Executive Law to appear in support of the constitutionality of the statute. The Corporation Counsel of New York City appeared as the legal representative of the New York City Department of Health, which had possession of appellant's sealed original birth certificate. The Attorney General and the Corporation Counsel denied that DRL § 114 was unconstitutional.

The trial court held that appellant's natural parents were necessary parties to the application. *In re Linda F.M.*, 92 Misc 2d 828, 829, 401 N Y S 2d 960, 962 (Sur. Ct. Bx. Co. 1978) (*"In re Linda F.M. (I)"*). Rather than appoint a guardian *ad litem* to represent these parties, the

---

* "No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct."

The petitioner further alleged that this requirement of the statute did not apply to either a private adoption or an application by an adult adoptive. Appellant has since abandoned these issues on appeal.

judge requested the Attorney General to participate in the good cause hearing.*

The Good Cause Hearing

Five witnesses testified at the good cause hearing: Mrs. Anne Mason, appellant's adoptive mother; Ms. Mason, appellant; Dr. Gendel, a psychiatrist who specialized in psychiatry and genetics; Rabbi Ebner, an orthodox Jewish rabbi; and Dr. Reynolds, a psychologist.

Mrs. Mason testified that in 1971 when appellant was 31 years old, appellant was first told she was adopted. (Tr. 16).**

Appellant testified that in 1959, when she was 19, she dropped out of college to get married. (Tr. 41). Less than a year later, on September 13, 1960, appellant had a child. *Ibid.* The next spring she transferred colleges and reentered school. In December of 1960 she divorced her husband, after approximately two years of marriage. (Tr. 43). Appellant graduated from college two years later in February of 1963 with a BA in Fine Arts. (Tr. 40-41).

Ms. Mason testified that she spent most of her time after graduation at home caring for her son (Tr. 42), although she did work part time, as a clerk. *Ibid.* In 1979, she began working full time with a small typesetting firm and now works in a law firm doing related work. (Tr. 42-43).

Ms. Mason remarried on November 2, 1971 (Tr. 50) but the parties separated in January, 1974. (Tr. 28). Appel-

---

* Appellant challenged the participation of the Attorney General in the courts below. Appellant's objection was based solely on her claim that no other party was necessary for the hearing and not that appellant was prejudiced in any way by the failure of the trial court to appoint a guardian *ad litem*. In any event, this issue has not been raised in this appeal.

** References to the transcript refer to the transcript of the good cause hearing held on March 16, 1978, and are designated "(Tr.)."

lant attributed the breakup of her marriage to the fact that three years earlier she had learned of her adoption. On cross-examination, she testified that during the marital breakup she never sought help. (Tr. 28-29). Appellant also testified to other causes for the dissolution of the marriage. Her parents were opposed to the marriage because her husband was younger than she and of a different religion. (Tr. 22). In addition, her adoptive farther was dying of cancer. (Tr. 22-23, 28).

Appellant testified that in 1974 she searched for records dealing with her adoption, eventually finding a birth certificate and her natural name. (Tr. 31). Her adoptive mother then supplied her with her natural mother's name and address. (Tr. 32). There was no testimony of how long the search took or its relevance to the instant proceeding.*

Ms. Mason testified that she had allergies which could have been inherited by her son. (Tr. 21). However, she admitted that her lack of knowledge of her natural parents had not affected her son's medical treatment. (Tr. 58). There was no evidence that appellant or her son are undergoing, or had undergone, any medical treatment for which genetic data was needed.**

Ms. Mason testified she could relate to people and to her adoptive family. (Tr. 47). She testified that she had consulted a psychiatrist in 1967 for about a year. (Tr. 45). However, these consultations were not related to her adoptive status. (Tr. 37). She saw Dr. Reynolds, a

---

* Apparently as a result of this investigation, appellant concluded that the information in the sealed records was inaccurate. Petition of Linda Mason verified May 24, 1977 at p. 5.

** Dr. Gendel is a psychiatrist specializing in psychiatry and human genetics. (Tr. 60). He merely indicated that genetic history is useful in diagnosing certain ailments. There was no attempt to relate his testimony to appellant's claim, and he did not discuss the only conditions appellant mentioned in her testimony: hay fever, some allergies and asthma. (Tr. 21, 44-45).

psychologist, for a few times, but then terminated the visits. (Tr. 36, 46).

Appellant testified that she wanted to inspect her records because she was curious about what they contained.

When her counsel asked why she wanted to see the records (which she concluded were inaccurate anyway) Ms. Mason stated:

> "Well, I don't know if the documents are accurate as to whatever names and addresses might be in them, but if my mother's signature is there, to just see something of hers and perhaps to be able to tell from how she writes her name what level of education she had or if it looks like forgery would be very meaningful to me." (Tr. 40).

Rabbi Ebner, a rabbi of the Orthodox Jewish faith, was the next witness. There was no claim that appellant was, or wanted to be, an Orthodox Jew. Therefore, his testimony was excused as speculative.*

The key witness in the good cause hearing was *Dr. Reynolds*. Dr. Reynolds is a psychologist who has conducted a study of adoptees. Ms. Mason first met Dr. Reynolds when she responded to his advertisement for subjects for his study. (Tr. 109). As part of the study, he administered five written tests to her which were admitted into evidence. (Tr. 145). The results were inconclusive.*

---

* Counsel for appellant sought Rabbi Ebner's testimony to show that Ms. Mason's son *might* want to marry an Orthodox Jewish girl (Tr. 92) or *might* want to emigrate to Israel. (Tr. 96).

* Appellant scored in the middle range of a test measuring self-reliance and in the middle range of a test measuring anxiety. In two multi-phasic tests, Dr. Reynolds interpreted his scores as indicating a high degree of inquisitiveness, compulsion, low trust and emotional instability. In the last multi-phasic measuring some fifteen different characteristics, appellant scored out of the normal range on only one, which Dr. Reynolds described as self-image. (Tr. 156-158).

(Tr. 158). Even the limited variations noted could have been caused by events which were unrelated to her adoption. (Tr. 156-158).

Dr. Reynolds testified that Ms. Mason subsequently came to see him in February of 1977. Although he characterized her condition as "quite disturbed" (Tr. 123), in a "fairly large life crisis" (Tr. 127) and "extremely disturbed" about discovering six years earlier that she was adopted (Tr. 127), all of the courts that have reviewed this case have rejected his conclusory testimony.

In February and March of 1977, Ms. Mason consulted Dr. Reynolds for a very limited time, for three one-hour sessions which consisted solely of interviews. (Tr. 144). He saw her again one hour in September of 1977, three months after appellant filed her petition. (Tr. 144). Dr. Reynolds testified that he normally sees patients with serious conditions for a year or more. (Tr. 146-147). Furthermore, Dr. Reynolds stated that he was not treating Ms. Mason, nor did he recommend that she receive any treatment. (Tr. 140, 143). Dr. Reynolds admitted that inspection of the adoption records was not based on need, but on his opinion that it would be beneficial to Ms. Mason "simply in terms of finding out about herself." (Tr. 151). He admitted that even this opinion as to a limited benefit might be wrong because of his limited knowledge of her background. (Tr. 136, 151-59).

The Surrogate held that appellant had not established good cause and that the requirement of good cause was not prohibited by the Constitution of the United States. *In re Linda F.M.*, 95 Misc. 2d 581, 409 N Y S 2d 638 (Sur. Ct. Bx. Co. 1978) (hereinafter cited as *"In re Linda F.M. (II)"*). The Appellate Division unanimously affirmed on the opinion below. The case was appealed to the Court of Appeals, which unanimously affirmed without opinion the decision of the trial court. See Jurisdictional Statement, Appendix A.

POINT I

The Federal Question is Insubstantial.

New York's requirement that adoptees must show good cause before allowing inspection of adoption records was held constitutional in *ALMA Society, Inc.* v. *Mellon*, 459 F. Supp. 912 (S.D.N.Y. 1978), *aff'd*, 601 F. 2d 1225 (2d Cir.), *cert. denied*, 444 U.S. 995 (1979). In *ALMA*, the Courts rejected the same claims raised in this appeal. The District Court held:

> "It is the opinion of this Court that plaintiff's rights to privacy and to receive important information are not constitutionally abridged by the New York statutes but rather are permissibly limited in accordance with a valid state interest to balance conflicting rights of privacy and to protect the integrity of the adoption process, which is likely to suffer if the assurances of secrecy are not present. Constitutional principles of equal protection do not require that all persons be treated identically.
>
> The state has more than a rational basis; it has a compelling interest in regulating the access here." 459 F. Supp. at 917.

This holding is clearly correct.

Of the 50 states, only six have adoption records access to laws which are substantively different from the laws of New York.* Every court that has considered the con-

---

* Only Alabama, Georgia, Kansas, Michigan, Montana and Oklahoma open all adoption records to adult adoptees. 16 Ala. Code § 26-104; Ga. Code § 74-417 (1981 Supp.); Kan. Stat. § 65-2423 (1979 Supp.); Mich. Stat. § 710.67 (1981 Supp.); Mont. Rev. Codes Ann. §§ 61-213, 69-4421; Okla. Stat. § 60.18 (1981 Supp.). The District of Columbia, Montana and Pennsylvania allow adult adoptees access to their original birth certificates, D.C. Code § 16-314 (1979 Supp.); Mont. Rev. Codes Ann. § 69-4421; 1 Pa. Cons. Stat. § 507. Iowa, South Dakota and Virginia allow adult adoptees to inspect redacted adoption records. Iowa Code § 600.16 (1980 Supp.); S. D. Compiled Laws Ann. § 625-6-15 (1972); Va. Code § 63.1-236.

stitutionality of a statute restricting access to adoption records has affirmed its constitutionality. *Yesterday's Children* v. *Kennedy*, 569 F. 2d 431 (7th Cir. 1977), *reh. denied, cert. denied*, 437 U.S. 904 (1978); *Application of Maples*, 563 S.W. 2d 760 (Mo. 1978) (en banc). The importance of the state interest in preserving the confidentiality of adoption records and the interest of the natural parents in maintaining their privacy have been universally recognized by the courts. *ALMA Society, Inc.* v. *Mellon, supra*, 601 F. 2d 1225; *In re Application of Anonymous*, 89 Misc. 2d 132, 134-35, 390 N Y S 2d 779, 782 (Sur. Ct. Qns. Co. 1976); *In re Maxtone-Graham*, 90 Misc. 2d 107, 109-10, 393 N Y S 2d 835, 836-37 (Sur. Ct. N.Y. Co. 1975). *See also Application of Maples, supra; In re Adoption of Rand*, 347 So. 2d 450 (Fla. Ct. App. 1977); *Mills* v. *Atlantic City Department of Vital Statistics*, 372 A. 2d 646, 655-56 (N.J. Ch. Div. 1977). Even courts in states that provide for open access to adoption records by adult adoptees have expressed concern for these competing interests. *In re C.A.B.*, 384 A. 2d 679 (D.C. Ct. App. 1978); *Chambers* v. *Parker*, 349 So. 2d 424 (La. Ct. App. 1977).*

This consistent judicial recognition that there are important interests competing with appellant's claimed right to inspect adoption records established that there is no substantial federal question involved in this appeal and the appeal should be dismissed.

POINT II

In the alternative, the order of the Court of Appeals of the State of New York should be affirmed.

Appellant challenges the constitutionality of DRL § 114 on the ground that it infringes upon her right of privacy

---

* For this reason, a number of states that once provided for access by adult adoptees have imposed new restrictions. *See* 11 Ariz. Rev. Stat. § 36-326 (1981 Supp.); Conn. Gen. Stat. § 7-53 (1981 Supp.); Fla. Stat. Ann. § 382.22 (1980); La. Rev. Stat. Ann. § 40.79.

and rights protected by the First Amendment. Every court that has considered the question has rejected these contentions without dissent.

First Amendment

Appellant misinterprets the First Amendment right to receive information, which is the freedom to read and listen to what we please without the State's intrusion into either our book or tape library. *Stanley* v. *Georgia,* 394 U.S. 557, 564 (1969) (App. br. 20, 21, 22). This is a far cry from having a constitutional right to require an unwilling speaker to speak or to receive information which the State maintains as confidential, especially where there are competing interests involved.

Privacy

Appellant alleges that DRL § 114 interferes with a fundamental constitutional "right of privacy". Appellant tries to transform a general right of privacy-a right to be free from unwanted intrusion into her personal affairs-into a quite different right, the right to force government to communicate with her about confidential information the legislature has appropriately determined should be sealed because it affects state interest and the privacy of other individuals. This is the vital distinction between the leading privacy cases such as *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Roe* v. *Wade,* 410 U.S. 113 (1973); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972) and the case at bar.*

It is appellant who would invade the right of privacy of others. This difference was recognized by the court in *Application of Maples, supra:*

> "Here, something quite different occurs; the natural parents' right of privacy is shielded by the statute but appellant insists the state strip the anonymity they

---

* This distinction is also recognized in the Freedom of Information Act cited by appellants (App. br. 15). *Department of Air Force* v. *Rose,* 425 U.S. 352 (1976).

> believed was there and divulge the information received under an additional cloak of confidentiality. . . . There must be finality for the natural parents and a new beginning; if there is a right of privacy not to be lightly infringed, it would seem to be theirs." 563 S.W. 2d at 763.

Even if appellant's privacy were in fact somehow infringed by DRL § 114, the statute is still constitutional as the scope of the general right to privacy is for the state to define. *Katz* v. *United States*, 389 U.S. 347, 350-57 (1967). The New York legislature has balanced appellant's right to inspect her adoption records with valid, competing state interests that the state has also recognized: the state's interest in promoting successful adoptions and the right of privacy granted to the natural parents as past of the adoption process.

New York has a strong public policy in favor of sealing these records and in protecting the natural parents' rights. *ALMA Society, Inc.* v. *Mellon, supra; People ex rel. Scarpetta* v. *Spence-Chapin Adoption Service*, 28 N Y 2d 185, 321 N Y S 2d 651 (1971). DRL § 114 is part of a carefully considered and integrated statutory scheme. New York's scheme promotes the insulation of the adoptive family from the natural parents. DRL § 111-3. Confidentiality also promotes the maximum candor of the natural parents and the adoptive parents. The natural parents must disclose intimate facts about themselves. An extensive investigation is also made of prospective adopting parents. Clearly, confidentiality increases the likelihood that such disclosure is freely given:

> "Adoption is favored and encouraged as a matter of public policy. To this end the natural parent or parents must feel secure in the knowledge that their identity usually will remain confidential. Certainly the assurance of anonymity is an important consideration in the parents' decision to consent to the adoption

of their child." *In re Spinks*, 232 S.E. 2d 479, 483 (N.C. Ct. App. 1977).

Accord, ALMA Society, Inc. v. *Mellon, supra*, 459 F. Supp. at 916; *Mills* v. *Atlantic City Department of Vital Statistics, supra* at 651, 653; *In re Linda F.M. (II); In re Application of Anonymous*, 89 Misc. 2d at 133-34, 390 N Y S 2d at 780; *Application of Maples, supra* at 763-65.

The State has reasonably provided the natural parents with more than the expectation of privacy, to wit, with statutory recognition of their rights, which are also protected by the Constitution. *Katz* v. *United States, supra; Roe* v. *Wade, supra* at 152; *Mills* v. *Atlantic City Department of Vital Statistics, supra* at 651.

Appellant's claim that DRL § 114 impermissibly interfers with an adoptee's right to "identity" is fallacious.* Any "identity crisis" is a result of adoption, a process appellant is not challenging. It is the essence of adoption that the natural family unit is severed and a new one created. DRL § 117; *Application of Maples, supra; In re Application of Anonymous*, 89 Misc. 2d at 133, 390 N Y S 2d at 780. Proof that this creates severe psychological disturbances at later times can constitute good cause entitling the adoptee to access to her records. *In re Application of Anonymous*, 92 Misc. 2d 224, 399 N Y S 2d 857 (Sur. Ct. Qns. Co. 1977); *In re Maxtone-Graham, supra.* However, the mere fact that there is a "gap" in one's life history is not sufficient to establish good cause nor to establish a constitutionally prohibited harm to an adoptee. *ALMA Society, Inc.* v. *Mellon, supra.* As the trial court herein held:

"It cannot be concluded that the constitution envisaged rights such [as] 'personality' or an un-

---

* A few isolated studies are cited by appellant, some without proper controls. (Tr. 110). As the Court of Appeals found, this does not establish that adoptees *per se* have good cause to inspect their records.

> fettered right to receive any information one might desire. Petitioner has neither shown a valid basis for concluding from either the United States or New York Constitutions that such rights exist or if they do exist how they are violated by the statute at issue exceeding the legitimate exercise by the state of its police powers. *In re Linda F.M. (II)*, 95 Misc. 2d at 591, 409 N Y S 2d at 643.

Similarly, if there is a need for genetic material, this can also constitute good cause under the New York statute for allowing access. *Chattman* v. *Bennett*, 57 A D 2d 618, 393 N Y S 2d 768 (2d Dept. 1977). The proof was simply inadequate here.

The issue before this Court is not whether New York's statutory scheme is the best possible but whether New York could rationally conclude that maximum disclosure during the adoption process (and successful placements) is promoted by protecting the confidentiality of adoption records. As this Court stated in *Smith* v. *Organization of Foster Families for Equality and Reform*, 431 U.S. 816, 855-56 (1977),

> "We deal here with issues of unusual delicacy, in an area where professional judgments regarding desireable procedures are constantly and rapidly changing. In such a context, restraint is appropriate on the part of courts called upon to adjudicate whether a particular procedural scheme is adequate under the Constitution."

DRL § 114 is constitutional as applied to appellant

The trial court found that appellant had failed to establish good cause to view her adoption records. This was unanimously affirmed by the Appellate Division and the Court of Appeals. The trial court heard the witnesses and could determine their credibility.

The Court should not overturn this determination. In determining this appeal, evidence favorable to the prevailing party should be construed as true and the prevailing party should receive the benefit of every favorable inference that can be drawn. *Isaac* v. *Town of Queensbury*, 277 N.Y. 37, 12 N.E. 2d 785 (1938).

The record establishes that appellant proved no medical need to inspect the record. Nor was there any attempt to connect appellant's lack of success in her second marriage with the instant proceeding. The court was within its rights to reject the conclusions of the psychologist, Dr. Reynolds, because the facts did not support his conclusion. Rather, Dr. Reynolds' testimony was based on his belief that *any* adoptee should be able to inspect her records; this belief does not establish the unconstitutionality of DRL § 114.

The trial judge's conclusion that no good cause was shown was completely justified by the record and should be affirmed by the Court.

CONCLUSION

Appeal should be dismissed, or, in the alternative, the order of the Court of Appeals should be affirmed.

Dated: New York, New York
July 7, 1981

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney Pro Se

SHIRLEY ADELSON SIEGEL
Solicitor General

CHARLES BRODY
Assistant Attorney General
Of Counsel